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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/666,347	09/19/2003	Michael D. Green	023340-0201	4647
30542	7590	02/08/2006		
FOLEY & LARDNER LLP P.O. BOX 80278 SAN DIEGO, CA 92138-0278			EXAMINER PATEL, TAJASH D	
			ART UNIT	PAPER NUMBER
			3765	

DATE MAILED: 02/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/666,347	Applicant(s) GREEN, MICHAEL D.	
	Examiner Tejash D. Patel	Art Unit 3765	

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-9, 11, 12, 14, 15, 18 and 19 is/are rejected.
- 7) ☒ Claim(s) 6, 10, 13, 16 and 17 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant timely traversed the restriction (election) requirement in the reply filed on October 17, 2005. The restriction requirement made in the Office action mailed on October 18, 2005 is hereby withdrawn. Further, claims 1-18 of group I and claim 19 have been rejoined as per 37 CFR 1.142.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-5, 7-8, 11-12 and 18-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Vadher (US 5,716,307). Vadher discloses an exercise/training, crew neck garment (10) including sleeves (14,22) and a torso portion having an adjustable waist belt (61) defining a pair of flaps being substantially secured to respective sides of the abdominal region that is inherently fastened by hook and loop material, col. 6, lines 22-27 and as shown in figure 1. Also, the garment includes a leg portion (30) that is integrally formed with the torso portion as shown in figures 1 and 2.

Furthermore, a manually tension control element (12, 20) is adjustable by buckle (68) that is located in the front of the garment and extends from the upper abdominal region to a lower abdominal region thereof, col. 5, lines 1-60 and as shown in figure 1.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 9, 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vadher.

With regard to claim 9, it would have been obvious to form the garment of Vadher to be sleeveless as required for a particular end application thereof.

With regard to claim 14, it would have been obvious to one skilled in the art that the garment of Vadher can be made of any desired material that was available at the time the device was made or depending on the end use thereof.

With regard to claims 15, it would have been obvious to one skilled in the art that any desired item can be attached to an accessory strap (118) of the garment of Vadher as required for a particular application or end use thereof.

Response to Amendment

6. The response filed on October 17, 2005 has been considered. In view of such, claims 1-18 of Group I have been rejoined with claim 19 of Group II. However, a newly discovered prior art reference has prompted this office action to be made new-non Final and the arguments are moot.

Allowable Subject Matter

7. Claims 6, 10, 13, 16 and 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tejash Patel whose telephone number is (571) 272-4993. The fax phone number for this group is (571) 273-8300.

February 3, 2006



**TEJASH PATEL
PRIMARY EXAMINER**